

Amendment No. 1 to SB2168

Lundberg  
Signature of Sponsor

**AMEND Senate Bill No. 2168\***

**House Bill No. 2833**

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 49-13-104, is amended by deleting subdivision (14) and adding the following as new subdivisions:

( ) "Replication" means the creation of one (1) or more subsequent charter schools that use the same academic focus of an existing charter school operated by a sponsor or governing body;

( ) "Underutilized property":

(A) Means a building or portion thereof, with or without improvements, that is operated by an LEA at less than fifty-five percent (55%) capacity, as reported pursuant to § 49-13-136(c)(1)(C), or in which more than fifty percent (50%) of the building is not being used by an LEA for direct academic instruction of students in pre-kindergarten through grade twelve (pre-K-12), or any combination thereof, including, but not limited to, spaces suitable for classroom use that are currently being used for storage of any kind; and

(B) Does not include real property on which a building or permanent structure has not been erected or vacant property;

( ) "Vacant property":

(A) Means a building, with or without improvements, which is closed or no longer used for direct academic instruction for students in pre-kindergarten through grade twelve (pre-K-12), or any combination thereof, including, but not

limited to, spaces suitable for classroom use that are currently being used for storage of any kind; and

(B) Does not include real property on which a building or permanent structure has not been erected;

SECTION 2. Tennessee Code Annotated, Section 49-13-106, is amended by deleting subsection (i) and substituting:

(i) If a sponsor seeks to establish a new public charter school, then the sponsor must apply to the local board of education or to the commission pursuant to § 49-13-108(h)(3).

SECTION 3. Tennessee Code Annotated, Section 49-13-107(b), is amended by deleting the language "developed by the department" and substituting "developed by the department in coordination with the Tennessee public charter school commission".

SECTION 4. Tennessee Code Annotated, Section 49-13-108(b)(5)(B), is amended by designating the subdivision as subdivision (b)(5)(B)(i) and adding the following as a new subdivision (b)(5)(B)(ii):

(ii) An applicant shall not change an application on appeal. The commission or the commission's designee may request that the applicant provide supplemental documentation for use in a review conducted under subdivision (b)(5)(B)(i)(b) within fourteen (14) calendar days after receipt of the appeal. An applicant has ten (10) calendar days after receipt of the request to provide the requested information.

SECTION 5. Tennessee Code Annotated, Section 49-13-108(b)(5)(D), is amended by deleting the semicolon ";" at the end of the subdivision and substituting instead a period "." and by adding the following language at the end of the subdivision:

The commission may require a school authorized by the commission under this section to delay opening for up to one (1) school year through the charter agreement;

SECTION 6. Tennessee Code Annotated, Section 49-13-108, is amended by adding the following as a new subsection:

(h)

(1) If, beginning on January 1, 2023, a local board of education's decision to deny a new public charter school application is overturned by the commission at least three (3) times within a three (3) consecutive year period, then a sponsor seeking to open a public charter school in that school district may apply to the local board of education or directly to the commission for the five (5) consecutive years immediately following the date on which the commission overturned the local board's third decision to deny a new public charter school application.

(2) After the five (5) consecutive year period referenced in subdivision (h)(1), an applicant must apply to the local board of education.

(3) If a sponsor chooses to apply directly to the commission, then the application process must be conducted in accordance with § 49-13-107 and the following:

(A) The commission shall rule by resolution, at a regular or specially called meeting, to approve or deny a public charter school application no later than ninety (90) days after the commission's receipt of the completed application. If the commission fails to approve or deny a public charter school application within the ninety-day time period prescribed in this subdivision (h)(3), then the public charter school application is deemed approved;

(B) The grounds upon which the commission based a decision to deny a public charter school application must be stated in writing and must specify objective reasons for the denial. Upon receipt of the grounds for denial, the sponsor has thirty (30) days from receipt to submit an amended application to correct the deficiencies. The commission has sixty (60) days from receipt of an amended application to approve or deny the amended application. If the commission fails to approve or deny the

amended application within sixty (60) days, then the amended application is deemed approved;

(C) The commission's decision is final and is not subject to appeal; and

(D) If the commission approves an application, then the commission is the authorizer and the LEA for that public charter school.

SECTION 7. Tennessee Code Annotated, Title 49, Chapter 13, Part 1, is amended by adding the following as a new section:

(a)

(1) A governing body that has at least one (1) public charter school authorized by the commission that has been in operation for at least one (1) full school year may apply for replication directly to the commission. A charter school replicated pursuant to this section must be located within the same geographic boundaries of the LEA in which the authorized public charter school that has been in operation for at least one (1) full school year is located.

(2) If a sponsor for replication chooses to apply directly to the commission, then the application process must be conducted in accordance with § 49-13-107 and the following:

(A) The commission shall rule by resolution, at a regular or specially called meeting, to approve or deny a replication application no later than seventy-five (75) days after the commission's receipt of the completed application. If the commission fails to approve or deny a replication application within the seventy-five-day time period prescribed in this subdivision (a)(2)(A), then the replication application is deemed approved;

(B) The grounds upon which the commission based a decision to deny a replication application must be stated in writing and must specify

objective reasons for the denial. Upon receipt of the grounds for denial, the sponsor has thirty (30) days from receipt to submit an amended application to correct the deficiencies. The commission has forty-five (45) days from receipt of an amended application to approve or deny the amended application. If the commission fails to approve or deny the amended application within forty-five (45) days, then the amended application is deemed approved;

(C) The commission's decision is final and is not subject to appeal; and

(D) If the commission approves an application, then the commission is the authorizer and the LEA for that public charter school.

(3) This section does not prohibit a governing body from applying for replication to the local board of education through the regular application process outlined in § 49-13-108.

SECTION 8. Tennessee Code Annotated, Section 49-13-136, is amended by deleting subsections (c) and (d) and substituting instead:

(c)

(1) By May 1, 2023, and by each May 1 thereafter, an LEA in which one (1) or more public charter schools operate shall publish the following information on the LEA's website for each building operated by the LEA, including buildings owned by the LEA that are currently being used by a public charter school:

(A) The address or location of each building and the total square footage of, and the number of classrooms in, each school building;

(B) The portion of the total square footage of a building that is used by the LEA for direct instruction to students in pre-kindergarten through grade twelve (pre-K-12), or any combination thereof;

(C) The enrollment capacity of each building and the number of students in pre-kindergarten through grade twelve (pre-K-12), or any combination thereof, receiving academic instruction in the building; and

(D) If a building is not used by the LEA for direct academic instruction for students in pre-kindergarten through grade twelve (pre-K-12), or any combination thereof, then the manner in which the school building is used, including whether the building is vacant or is being used for administration, storage, or professional development.

(2) An LEA in which one (1) or more public charter schools operate shall submit a comprehensive listing of all underutilized property or vacant property to the department of education and the comptroller of the treasury. The department shall make an LEA's list available to a public charter school operating in the LEA or to a sponsor seeking to establish a public charter school in the LEA.

(3) A public charter school may petition the comptroller of the treasury for an audit of the list of all underutilized property or vacant property submitted by the LEA in which the public charter school is, or will be, geographically located. The comptroller of the treasury is authorized to promulgate rules, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the administration of this subdivision (c)(3).

(4) A public charter school operating within the geographic boundaries of an LEA, excluding public charter schools in the achievement school district, has a right of first refusal to:

(A) Purchase vacant property listed by the LEA under this section at or below fair market value. For purposes of this subsection (c), "fair market value" is determined by taking the average of two (2) separate appraisals conducted by two (2) independent, qualified appraisers, one

(1) selected by the LEA and one (1) selected by the public charter school;  
or

(B) Lease underutilized property or vacant property listed by the LEA under this section at an annual cost not to exceed the annual capital outlay funding received by the public charter school leasing the building as calculated under § 49-13-112(d). A lease agreement executed between a public charter school and an LEA shall not reflect any outstanding bonded debt on the underutilized property or vacant property, except as agreed upon to reflect any necessary costs associated with the occupation or remodeling of the facility.

(5)

(A) Upon the execution of a lease agreement pursuant to this section, a public charter school has unrestricted use of the property. The public charter school shall provide for routine maintenance and repair so that the leased property is maintained in as good of order as when the lease was executed. The public charter school is responsible for paying all utilities used by the public charter school at the leased property. Extensive repairs to buildings or facilities considered capital expenses are the responsibility of the LEA funding body and not the public charter school. If the public charter school makes extensive repairs to buildings or facilities considered capital expenses, then the capital expenses must be credited against the cost of the lease. Any fixtures, improvements, or tangible assets added to leased property by the public charter school pursuant to this section must remain at the leased property upon the public charter school's return of the leased property to the LEA.

(B) If the LEA decides to sell the school building that the public charter school is leasing, then the public charter school must be provided

the right of first refusal to purchase the school building at or below fair market value, less the value of all rental payments made to the LEA during the term of the lease.

(C) If, during the term of the lease, the charter school closes or ceases using the building, then the building must be placed on the LEA's vacant or underutilized property list pursuant to this subsection (c).

(d) The state board of education is authorized to promulgate rules, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the administration of this section.

SECTION 9. Tennessee Code Annotated, Section 49-13-136, is amended by adding the following as a new subsection:

(g) The property tax exemptions in §§ 67-5-203 and 67-5-212 apply to public charter school property, including any facility, or portion thereof, used to house a public charter school.

SECTION 10. Tennessee Code Annotated, Section 49-13-144(b), is amended by deleting the language:

Such policies must ensure funds are made available on an equitable basis for the benefit of public charter schools of all sizes, characteristics, geographic locations, and authorizers.

and substituting instead:

Such policies must ensure at least fifty percent (50%) of the funds are made available on a per pupil basis for the benefit of public charter schools of all sizes, characteristics, geographic locations, and authorizers.

SECTION 11. This act is not an appropriation of funds, and funds must not be obligated or expended pursuant to this act unless the funds are specifically appropriated by the general appropriations act.

SECTION 12. This act takes effect July 1, 2022, the public welfare requiring it.